

## **Chapter 3-144 Restrictive Purchase of Service Summary of Changes**

### **Posting of Notice of Restrictive Purchase of Service**

- Adds required posting of the request and notice to the Internet prior to review by the chief procurement officer. Removes required public notice in newspaper.

### **Review by chief procurement officer**

- Amends procedure to require posting of the request and notice to the Internet prior to review by the chief procurement officer.

### **Amendment to a Restrictive Purchase**

- Establishes procedure allowing amendments to a restrictive purchase of service in certain circumstances including but not limited to: 1) a change in the scope that could not have been foreseen; 2) extension up to six months if the service will not be needed beyond that; or 3) funding increase up to 10% or \$50,00 whichever is less if the service will not be needed after that.

### **Contents of Request**

- Amends 'approximate' amount of funds to 'maximum' amount of funds budgeted for the service for purposes of clarity and to place restrictions on maximum funding.

### **Contents of Notice**

- Adds the requirement of the following in the public notice for purposes of clarity: 1) Name of procurement officer and the head of the purchasing agency; 2) Statement that protests must be filed within ten working days of the date of first posting of the notice; and 3) Contact person to whom inquiries may be addressed.

### **Contents of Request for Amendment.**

- Adds contents of request for amendment.

### **Request for Information (RFI)**

- Amends public notice requirement for RFIs to be in accordance with section 3-142-202 for purposes of clarity.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 144

RESTRICTIVE PURCHASE OF SERVICE

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SUBCHAPTER 1

PURPOSE AND SCOPE

§3-144-101 Purpose. The purpose of this chapter is to implement section 103F-403, HRS, which establishes the restrictive purchase of service method of procurement, by providing rules and procedures for the use of this method of procurement.

§3-144-102 Scope. (a) The restrictive purchase of service method of procurement may be used when:  
(1) The head of a purchasing agency makes a written determination that there is a

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- basis for restricting the purchase to a purchase from one provider;
- (2) The chief procurement officer approves the restrictive purchase determination in writing; and
  - (3) The term of the proposed contract does not exceed two years, or, upon a written finding of good cause by the chief procurement officer, three years.

## SUBCHAPTER 2

### CORE PROCEDURES

§3-144-201 Procedure for requesting restrictive purchase of services. (a) In order to initiate a restrictive purchase of services procurement, the head of the purchasing agency shall submit a written request for restrictive purchase of service to the chief procurement officer together with a notice of restrictive purchase.

(b) Rush review. If a rush review of a request is needed, a separate memorandum explaining and justifying the reason for the rush review shall be submitted with the request and proposed notice.

(c) The administrator may prescribe the format for the request and notice.

~~§3-144-202 [Review of request and proposed notice by chief procurement officer. (a) After the purchasing agency submits its request for restrictive purchase and notice of restrictive purchase, the chief procurement officer shall promptly review both to verify that the request and notice comply with the requirements of section 103F-403, HRS, and this chapter. Upon verifying compliance, the chief procurement officer shall approve the request and the notice in writing, and return the approval, the request, and the notice to the purchasing agency.~~

~~(b) Disapproval of request and notice. If the chief procurement officer finds that either the~~

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~~request or the notice fails to comply with the requirements of section 103F-403, HRS, or this chapter, then the request and notice shall be disapproved. Upon disapproval, the chief procurement officer shall return the request and notice to the purchasing agency together with a written explanation for the disapproval.~~

~~(c) Resubmission after disapproval. When the chief procurement officer disapproves a request and notice, the purchasing agency may attempt to address the disapproval and resubmit the request and notice. Alternately, the purchasing agency may abandon the intended purchase altogether, or pursue another more appropriate method of procurement. [Eff \_\_\_\_\_]~~

~~(Auth: HRS § 103F-106) (Imp: HRS § 103F-403)~~  
Posting of notice of restrictive purchase. (a) The notice of restrictive purchase shall be posted to the state procurement office website for a minimum of seven days before any approval action is taken. A copy of the request shall be made available for public inspection and shall be posted with the notice.

§3-144-203 ~~[Posting of notice of restrictive purchase. (a) After the chief procurement officer approves the request for restrictive purchase and notice of restrictive purchase, the purchasing agency shall post a copy of the notice for five working days in an area accessible to the public, at least ten working days prior to any action to finalize the award of the contract.~~

§3-144-203

~~(b) Required newspaper publication. A copy of the notice of restrictive purchase shall be published by the purchasing agency at least once in a newspaper of general circulation on the island or in the locality in which the health and human services are to be provided. The date of the last newspaper publication shall be at least ten working days prior to any action to finalize the award of a contract. [Eff \_\_\_\_\_] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)]~~

Review of request by chief procurement officer. (a) After the notice has been posted for seven days, the chief procurement officer shall review the request. If approved, no action to award the contract shall take place until the notice has been posted ten days from the date of first posting. The status of the request shall be posted to the website where the request and notice are posted.

(b) Disapproval of request. If the chief procurement officer finds that the request fails to comply with the requirements of section 103F-403, HRS, or this chapter, then the request shall be disapproved. Upon disapproval, the chief procurement officer shall return the request and notice to the purchasing agency together with a written explanation for the disapproval.

(c) Resubmission after disapproval. When the chief procurement officer disapproves a request, the purchasing agency may attempt to address the disapproval and resubmit the request and notice. Alternately, the purchasing agency may abandon the intended purchase altogether, or pursue another more appropriate method of procurement.

§3-144-204 Protest of restrictive purchase. Protests to a restrictive purchase shall be made under the procedures established under chapter 3-148. Any protest received by the deadline set in the notice of restrictive purchase shall be addressed under the procedures established under chapter 3-148. All documents relating to the protest, including a written summary of the disposition of the protest, shall be maintained with the restrictive purchase of service file and included in the contract data base by the purchasing agency.

§3-144-205 Negotiation of contract. After the deadline for protests has passed and either no protest was filed or any protest that was filed was resolved in the purchasing agency's favor, the purchasing

agency may conduct negotiations as to any contract details that were not disclosed in the notice of restrictive purchase or in the request for restrictive purchase. Details that were disclosed in either the notice or the request should not be significantly changed in the negotiation of the contract for the restrictive purchase of services.

§3-144-206 Amendment to a restrictive purchase of service. Under certain circumstances an amendment to an approved restrictive purchase may be made upon approval by the chief procurement officer.

(a) Procedure for requesting an amendment.

(a) The chief procurement officer may, for good cause, approve an amendment to a restrictive purchase of service upon application by the head of the purchasing agency. Circumstances for approval of an amendment include but are not limited to:

- (1) Changing the scope of the contract to enlarge or enhance the contracted service due to unforeseeable circumstances and which meets the conditions in section 3-144-302;
- (2) Extending the contract up to six months provided the service will not be needed after that; or
- (3) Increasing the funding up to \$50,000 or ten per cent, whichever is less, to provide enhanced or more services as in (a)(1) or extending the contract as in (a)(2).

(b) Procedure for requesting an amendment. The head of the purchasing agency shall submit a request for an amendment to the restrictive purchase of service to the chief procurement officer. The chief procurement officer shall review the request, return the approved/disapproved request to the purchasing agency. If the amendment is disapproved, an explanation for the disapproval shall accompany the

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request. A copy of the request for amendment and status shall be posted to the state procurement office website.

## SUBCHAPTER 3

## CONTENT REQUIREMENTS

§3-144-301 Contents of request. A request for restrictive purchase of services shall be made in writing, and shall include all of the following:

- (1) The determination by the head of the purchasing agency that an adequate basis for a restrictive purchase of services exists;
- (2) A brief description of the circumstances that justify the restrictive purchase;
- (3) A brief description of the health and human services required, and the ~~[approximate]~~ maximum amount of funds budgeted for the purchase of the services;
- (4) The proposed contract period;
- (5) The provider that the purchasing agency proposes to provide the required services and any other material information the purchasing agency deems advisable to include; and
- (6) A certification by the head of the purchasing agency that the information provided in the request is true and correct.

§3-144-302 Basis for restrictive purchase. (a) An adequate basis for a restrictive purchase of service exists when the head of a purchasing agency determines that circumstances constituting good cause for the purchase exist, including but not limited to any of the following:



- (1) Only one provider can provide the services needed in a particular geographic area within a county;
- (2) Only one provider can provide services with a unique cultural approach designed for a limited target group;
- (3) Only one provider satisfies limitations imposed by the source of funds for the procurement, such as in the case when a particular provider is specified by federal law; or
- (4) Only one provider has responded to a request for proposals issued in compliance with the procedures established in section 3-143-609.

(b) Inadequate Justifications for Restrictive Purchase. None of the following circumstances alone shall constitute an adequate basis for a restrictive purchase of services:

- (1) The mere fact that a particular provider is or has been furnishing services to a purchasing agency does not constitute evidence that the provider is the only source for the type of service required;
- (2) The potential loss of funds at the end of a fiscal year shall not be a basis for restrictive purchase of service; or
- (3) A purchasing agency's failure to plan ahead sufficiently in order to issue a request for proposals and conduct a competitive purchase of services.

§3-144-303 Contents of notice. The notice of restrictive purchase shall include all of the following:

- (1) A statement that the purchasing agency intends to make a restrictive purchase of health and human services without issuing a request for proposals;

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- (2) The nature of services to be provided, the name of the provider to be issued the contract, the maximum dollar amount of the contract, and any other material information the purchasing agency deems advisable to include;
- (3) The proposed date on which the contract is to be awarded;
- (4) A statement indicating that any person may file written protests under the procedures established under chapter 3-148 to the issuance of the proposed contract;
- (5) The name and address of ~~[the person or purchasing agency]~~ the procurement officer for the procurement and the head of the purchasing agency with whom the protests are to be filed; and
- (6) ~~[The date by which the protests are to be filed.]~~ A statement that all protests must be filed within ten working days of the date of first posting of the notice.
- (7) The name , phone number and e-mail address of a contact person to whom questions regarding the request may be addressed.

3-144-304 Contents of request for amendment. The request for amendment shall include:

- (1) The service title and log number of the original Restrictive Purchase;
- (2) The provider;
- (3) A brief description of the circumstances justifying an amendment to the restrictive purchase of service; and
- (4) The proposed changes to the terms of the contract to be amended.

SUBCHAPTER 4

ALLOWABLE COMMUNICATIONS

§§3-144-401 to 3-144-500 (Reserved).

SUBCHAPTER 5

EXPEDITING PROCEDURES

§§3-144-501 to 3-144-600 (Reserved).

SUBCHAPTER 6

MISCELLANEOUS PROCEDURES

§3-144-601 Requests for information for restrictive purchase of service. (a) A purchasing agency may at any time prepare a request for information in order to facilitate the purchasing agency's planning and to determine the appropriateness of making a restrictive purchase of services. Requests for information ~~[may be written, oral, or issued through electronic media or any combination of these methods, and may be sent to any knowledgeable person or entity the purchasing agency deems advisable.]~~

~~—— (b) Permissible subjects. Requests for information may address any subject relevant to a planned or proposed restrictive purchase of service, including but not limited to the following:~~

- ~~(1) The objective of the procurement;~~
- ~~(2) The target population or clients to be served;~~
- ~~(3) The services the purchasing agency anticipates may be necessary to achieve the outcome or objective; or~~

~~(4) Service specifications, feasibility, viability, or cost.~~

~~(c) Form of request. In addition to a description of the information being sought, and the procedure for responding, a request for information shall include:~~

~~(1) A statement that participation is optional and is not required to respond to a subsequent procurement;~~

~~(2) A statement that the purchasing agency reserves the right to adopt or not adopt any recommendations presented in the response to the request for information; and~~

~~(4) A statement that neither the purchasing agency nor the party responding has any obligation under the request for information.]~~

shall be conducted in accordance with section 3-142-202.

§3-144-602 Restrictive purchase of service record of procurement actions. (a) The procurement officer of the purchasing agency shall maintain records by fiscal year of all restrictive purchase of service procurements made for a minimum of the past five fiscal years.

(b) Annual reports of restrictive purchase procurements. By the fifteenth day of August of each year, the heads of purchasing agencies shall make reports to the administrator of all restrictive purchase of service procurements made by their respective agencies for the immediately preceding fiscal year. The report shall be made in the format prescribed by the administrator.

(c) Annual consolidated report. By the first day of October of each year, the administrator shall make a consolidated report of all restrictive purchase of service procurements made during the immediately preceding fiscal year. A copy of this report shall also be sent to the procurement policy board.